

FILED

08 MAY -2 PM 2:59

COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C §§ 1983Name O'Donnell, BrianRICHARD M. WILKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

(Last)

(First)

(Initial)

Prisoner Number T27719Institutional Address CSATF E3-107; PO Box 5242; Corcoran, CA 93212-5242**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**Brian O'Donnell

(Enter the full name of plaintiff in this action.)

vs.Shawn Dietrich, et al.,Case No. 07-4595 nmc (PR)

(To be provided by the Clerk of Court)

**COMPLAINT UNDER THE
CIVIL RIGHTS ACT,
Title 42 U.S.C § 1983****AMENDED COMPLAINT**

(Enter the full name of the defendant(s) in this action)

*[All questions on this complaint form must be answered in order for your action to proceed.]***I. Exhaustion of Administrative Remedies.****[Note:** You must exhaust your administrative remedies before your claim can go forward. The court will dismiss any unexhausted claims.]**A. Place of present confinement** Ca . Substance Abuse Treatment Facility**B. Is there a grievance procedure in this institution?**YES () NO ()**C. Did you present the facts in your complaint for review through the grievance procedure?**YES () NO ()**D. If your answer is YES, list the appeal number and the date and result of the appeal at each level of review. If you did not pursue a certain level of appeal, explain why.**

1 1. Informal appeal CTF 07-000603; 2/1/07

2 Bypass to higher level

4 2. First formal level CTF 07-000603; 2/1/07

5 Bypass to higher level

7 3. Second formal level CTF 07-000603; 3/26/07

8 Partial grant referred to Office of Internal Affairs

9 Cannot compensate.

10 4. Third formal level CTF 07-000603; / IAB Case No:0612857

11 7/3/07 Denied cannot compensate through appeals
12 process.

13 E. Is the last level to which you appealed the highest level of appeal available to
14 you?

15 YES () NO ()

16 F. If you did not present your claim for review through the grievance procedure,
17 explain why.

20 II. Parties.

21 A. Write your name and your present address. Do the same for additional plaintiffs,
22 if any.

23 Brian O'Donnell: T27719; CSATF/SP E3-107; PO Box 5242;

24 Corcoran, CA 93212-5242

26 B. Write the full name of each defendant, his or her official position, and his or her
27 place of employment.

28 Brian Greer; Sergeant; CDCR CTF Soledad Prison

1 Michael Burch; Lieutenant; CDCR CTF Soledad Prison

2 Valdemar Garcia; Correctional Officer; CDCR CTF Soledad

3 Shawn Dietrich; Correctional Officer; CDCR CTF Soledad

4

5 III. Statement of Claim.

6 State here as briefly as possible the facts of your case. Be sure to describe how each
7 defendant is involved and to include dates, when possible. Do not give any legal arguments or
8 cite any cases or statutes. If you have more than one claim, each claim should be set forth in a
9 separate numbered paragraph.

10 See Attached; "Statement of Claim" page 1-2

11

12

13

14

15

16

17

18

19

20

21

22

23 IV. Relief.

24 Your complaint cannot go forward unless you request specific relief. State briefly exactly
25 what you want the court to do for you. Make no legal arguments; cite no cases or statutes.

26 Plaintiff request assistance of counsel and to proceed in

27 a civil suit against Defendants for deliberately and

28 maliciously using excessive force for the purpose of

1 of causing harm. I am requesting also to be compensated
2 in the amount of \$250,000.00, plus all court fees and
3 counsel fees.

4

5 I declare under penalty of perjury that the foregoing is true and correct.

6

7 Signed this 29 day of April, 2008

8

9 Brian O'Donnell

10 (Plaintiff's signature)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

STATEMENT OF CLAIM

- 1) On January 16, 2007, at approximately 1:45PM, I was placed in plastic flexcuffs behind my back by 2nd watch Ad-Seg C/O for the purpose to be escorted to the M.R.I. trailer. I was then escorted from the 3rd Tier down to the 1st Tier and placed in a one-man standing cage while in the plastic flexcuffs. I was kept waiting until 3rd watch came on duty(2PM).

After awhile, Sgt. Greer approached the cage and asked me "Why are you in the cage?" I explained to him that my arms hurt from the flexcuffs and had been waiting for a long period of time to be escorted for an M.R.I..and if he could please take off the flexcuffs while I wait. He told me would not take them off. (See California Code of Regulations [CCR] Title 15, Division 3, Sub-chapter 4, Article 1.5, Section 3268.2(b)(3) Mechanical restraints shall not be applied in a way likely to cause undue physical discomfort or restrict blood flow or breathing.) He then got on the phone, called the 3rd Tier C/O's and instructed them to come down and escort me to the M.R.I. trailer.

About 20 minutes later, Sgt. Greer walked by and noticed that I was still in cuffs in the cage waiting for the 3rd Tier C/O's to come and escort me. He promptly walked over to the phone again. In an irrate tone, he ordered the 3rd Tier C/O's to immediately come down and escort me to the M.R.I. trailer. At approximately 2:20PM, C/O Dietrich and C/O Weaver came down to escort me. At this point, I had spent 35 minutes locked in a one-man, standing cage, with my hands tied behind my back, with flexcuffs.

- 2) I noticed that C/O Dietrich was irritated and his demeanor was unprofessional. On route to the M.R.I. trailer, he stated that I "was holding up his program". When we arrived at the M.R.I. trailer, the technician told C/O Dietrich that my hands needed to be placed in the front in order to proceed with the M.R.I.. C/O Dietrich then left the trailer to find something to cut off the plastic flexcuffs. While he was gone, C/O Garza, who was working at the M.R.I. trailer, called "O" Wing (Ad-Seg) and spoke to C/O Stricklin. C/O Stricklin stated that she would be right out with the proper tool to cut the flexcuffs.

C/O Dietrich returned with a pocketknife, but C/O Garza told him that the proper tool was on its way. C/O Dietrich gruffly declared that he was not waiting and that he was going to cut off the flexcuffs with the knife that he got from C/O Garcia. (See CCR Title 15, Div. 3, SC. 4, Art. 1.5, Section 3275(a) WEAPONS: Only such weaponry as has been approved by the Director for department-wide use, or for use only by disignated jurisdictions of the department, shall be issued/assigned to an employee or carried/used by an employee while on duty.)

I spoke up, "I hope you don't cut me." C/O Dietrich then aggressively and roughly held my arm with one hand as he started cutting the flexcuffs with his other hand. I felt a sharp pain in my lower left arm, which was where he cut me with the knife. I stated in a frightened tone,

"You got me!" Immediately, the M.R.I. technician started placing gauze and medical tape on the cut to stop the bleeding. My hands were cuffed in front of me to continue the exam. During the course of the M.R.I. exam, I was in intense pain due to the knife cut and I had to hold my arm with my right hand to keep it from bleeding.

At about 3:05PM, C/O Dietrich and C/O Weaver escorted me to the Central Infirmary where L.V.N. G. Ferrer cleaned the cut and placed two butterfly bandages on the cut to hold the skin together and prevent it from bleeding any further. The L.V.N. placed gauze and medical tape over the bandages. After treatment at about 3:20, C/O Dietrich cut off the flexcuffs with the proper tool and placed my hands behind my back to handcuff me with metal handcuffs. He then escorted me back to "O" WING, 3RD Tier, Cell 345L.

- 3) A little later, C/O Dietrich came to my cell and told me in an irrate manner that the Lieutenant wanted to speak with me. C/O Dietrich then placed me in handcuffs but did not properly lock the left cuff which caused it to tighten around the cut on my arm. (CCR Title 15, Div. 3, Sc. 4, Art. 1.5, Sec. 3268.2(b)(3) Mechanical restraints shall not be applied in a way likely to cause undue physical discomfort or restrict blood flow or breathing.) I explained to C/O Dietrich that the left handcuff was too tight. He stated that he would readjust it later. He then took me down to the 1st Tier to see the lieutenant.

When I arrived at the lieutenant's office, I was introduced to Lt. Burch and R.N. Greves for the purpose of a medical interview. During the interview, I explained to Lt. Birch that my arm was in a lot of pain and that I was losing feeling in my lower left arm because the cuff on my left arm was too tight. I asked him if he could please loosen it. He ordered me to stand up and turn around. After showing the lieutenant and nurse my arm they both had a shocked expression on their face. Lt. Burch, realizing he had no handcuff keys to loosen the cuff, opened the office door and ordered Sgt. Greer, who was standing out side the door, to readjust my left cuff so that I would regain circulation in my lower arm and ease the pressure off the cut (inflicted by C/O Dietrich) that was causing excruciating pain.

CONCLUSION

After this traumatic list of deliberate, gross, derelictions of duty that I experienced, psychologically and physically by the C/O's and supervisors mentioned in this statement, I was subjected to more torment and mental anguish directly inflicted by C/O Dietrich for a period of up to 14 days. Then I was re-housed away from C/O Dietrich and supervisors mentioned in this statement of facts. Further, I have experienced indirect taunting and reprisals by C/O's within the California Department of Corrections and Rehabilitation for seeking justice. I am suffering physical and psychological trauma on a daily basis as a direct result of the crimes committed against me on January 16, 2007. I am under psychiatric care and take medication to help me deal with the intense suffering I endured on January 16, 2007 and days following.

1 **COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C §§ 1983**

2 Name O'Donnell, Brian

3 (Last) (First) (Initial)

4 Prisoner Number T27719

5 Institutional Address CSATF E3-107; PO Box 5242; Corcoran, CA 93212-5242

7 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

8 Brian O'Donnell

9 (Enter the full name of plaintiff in this action.)

10 vs.

11 Shawn Dietrich, et al.,

12 _____

13 _____

14 (Enter the full name of the defendant(s) in this action)

15 _____

Case No. 07-4595 nmc (PR)
(To be provided by the Clerk of Court)

16 **COMPLAINT UNDER THE
CIVIL RIGHTS ACT,
Title 42 U.S.C § 1983**

"AMENDED COMPLAINT"

16 ***[All questions on this complaint form must be answered in order for your action to proceed.]***

17 I. Exhaustion of Administrative Remedies.

18 **[Note:** You must exhaust your administrative remedies before your claim can go
19 forward. The court will dismiss any unexhausted claims.]

20 A. Place of present confinement Ca. Substance Abuse Treatment Facility

21 B. Is there a grievance procedure in this institution?

22 YES () NO ()

23 C. Did you present the facts in your complaint for review through the grievance
24 procedure?

25 YES () NO ()

26 D. If your answer is YES, list the appeal number and the date and result of the
27 appeal at each level of review. If you did not pursue a certain level of appeal,
28 explain why.

1 1. Informal appeal CTF 07-000603; 2/1/07
2 Bypass to higher level
3
4 2. First formal level CTF 07-000603; 2/1/07
5 Bypass to higher level
6
7 3. Second formal level CTF 07-000603; 3/26/07
8 Partial grant referred to Office of Internal Affairs
9 Cannot compensate.
10 4. Third formal level CTF 07-000603; / IAB Case No:0612857
11 7/3/07 Denied cannot compensate through appeals
12 process.

13 E. Is the last level to which you appealed the highest level of appeal available to
14 you?

15 YES () NO ()

16 F. If you did not present your claim for review through the grievance procedure,
17 explain why.

18
19
20 II. Parties.

21 A. Write your name and your present address. Do the same for additional plaintiffs,
22 if any.

23 Brian O'Donnell; T27719; CSATF/SP E3-107; PO Box 5242;
24 Corcoran, CA 93212-5242

25
26 B. Write the full name of each defendant, his or her official position, and his or her
27 place of employment.

28 Brian Greer; Sergeant; CDCR CTF Soledad Prison

1 Michael Burch; Lieutenant; CDCR CTF Soledad Prison

2 Valdemar Garcia; Correctional Officer; CDCR CTF Soledad

3 Shawn Dietrich; Correctional Officer; CDCR CTF Soledad

4

5 III. Statement of Claim.

6 State here as briefly as possible the facts of your case. Be sure to describe how each
7 defendant is involved and to include dates, when possible. Do not give any legal arguments or
8 cite any cases or statutes. If you have more than one claim, each claim should be set forth in a
9 separate numbered paragraph.

10 See Attached; "Statement of Claim" page 1-2

11

12

13

14

15

16

17

18

19

20

21

22

23

IV. Relief.

24 Your complaint cannot go forward unless you request specific relief. State briefly exactly
25 what you want the court to do for you. Make no legal arguments; cite no cases or statutes.
26 Plaintiff request assistance of counsel and to proceed in
27 a civil suit against Defendants for deliberately and
28 maliciously using excessive force for the purpose of

1 of causing harm. I am requesting also to be compensated
2 in the amount of \$250,000.00, plus all court fees and
3 counsel fees.

4

5 I declare under penalty of perjury that the foregoing is true and correct.

6

7 Signed this 29 day of April, 2008

8 Brian O'Donnell

9

10 (Plaintiff's signature)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

STATEMENT OF CLAIM

1) On January 16, 2007, at approximately 1:45PM, I was placed in plastic flexcuffs behind my back by 2nd watch Ad-Seg C/O for the purpose to be escorted to the M.R.I. trailer. I was then escorted from the 3rd Tier down to the 1st Tier and placed in a one-man standing cage while in the plastic flexcuffs. I was kept waiting until 3rd watch came on duty(2PM).

After awhile, Sgt. Greer approached the cage and asked me "Why are you in the cage?" I explained to him that my arms hurt from the flexcuffs and had been waiting for a long period of time to be escorted for an M.R.I..and if he could please take off the flexcuffs while I wait. He told me would not take them off. (See California Code of Regulations [CCR] Title 15, Division 3, Sub-chapter 4, Article 1.5, Section 3268.2(b)(3) Mechanical restraints shall not be applied in a way likely to cause undue physical discomfort or restrict blood flow or breathing.) He then got on the phone, called the 3rd Tier C/O's and instructed them to come down and escort me to the M.R.I. trailer.

About 20 minutes later, Sgt. Greer walked by and noticed that I was still in cuffs in the cage waiting for the 3rd Tier C/O's to come and escort me. He promptly walked over to the phone again. In an irrate tone, he ordered the 3rd Tier C/O's to immediately come down and escort me to the M.R.I. trailer. At approximately 2:20PM, C/O Dietrich and C/O Weaver came down to escort me. At this point, I had spent 35 minutes locked in a one-man, standing cage, with my hands tied behind my back, with flexcuffs.

2) I noticed that C/O Dietrich was irritated and his demeanor was unprofessional. On route to the M.R.I. trailer, he stated that I "was holding up his program". When we arrived at the M.R.I. trailer, the technician told C/O Dietrich that my hands needed to be placed in the front in order to proceed with the M.R.I.. C/O Dietrich then left the trailer to find something to cut off the plastic flexcuffs. While he was gone, C/O Garza, who was working at the M.R.I. trailer, called "O" Wing (Ad-Seg) and spoke to C/O Stricklin. C/O Stricklin stated that she would be right out with the proper tool to cut the flexcuffs.

C/O Dietrich returned with a pocketknife, but C/O Garza told him that the proper tool was on its way. C/O Dietrich gruffly declared that he was not waiting and that he was going to cut off the flexcuffs with the knife that he got from C/O Garcia. (See CCR Title 15, Div. 3, SC. 4, Art. 1.5, Section 3275(a) WEAPONS: Only such weaponry as has been approved by the Director for department-wide use, or for use only by designated jurisdictions of the department, shall be issued/assigned to an employee or carried/used by an employee while on duty.)

I spoke up, "I hope you don't cut me." C/O Dietrich then aggressively and roughly held my arm with one hand as he started cutting the flexcuffs with his other hand. I felt a sharp pain in my lower left arm, which was where he cut me with the knife. I stated in a frightened tone,

"You got me!" Immediately, the M.R.I. technician started placing gauze and medical tape on the cut to stop the bleeding. My hands were cuffed in front of me to continue the exam. During the course of the M.R.I. exam, I was in intense pain due to the knife cut and I had to hold my arm with my right hand to keep it from bleeding.

At about 3:05PM, C/O Dietrich and C/O Weaver escorted me to the Central Infirmary where L.V.N. G. Ferrer cleaned the cut and placed two butterfly bandages on the cut to hold the skin together and prevent it from bleeding any further. The L.V.N. placed gauze and medical tape over the bandages. After treatment at about 3:20, C/O Dietrich cut off the flexcuffs with the proper tool and placed my hands behind my back to handcuff me with metal handcuffs. He then escorted me back to "O" WING, 3RD Tier, Cell 345L.

- 3) A little later, C/O Dietrich came to my cell and told me in an irrate manner that the Lieutenant wanted to speak with me. C/O Dietrich then placed me in handcuffs but did not properly lock the left cuff which caused it to tighten around the cut on my arm. (CCR Title 15, Div. 3, Sc. 4, Art. 1.5, Sec. 3268.2(b)(3) Mechanical restraints shall not be applied in a way likely to cause undue physical discomfort or restrict blood flow or breathing.) I explained to C/O Dietrich that the left handcuff was too tight. He stated that he would readjust it later. He then took me down to the 1st Tier to see the lieutenant.

When I arrived at the lieutenant's office, I was introduced to Lt. Burch and R.N. Greves for the purpose of a medical interview. During the interview, I explained to Lt. Birch that my arm was in a lot of pain and that I was losing feeling in my lower left arm because the cuff on my left arm was too tight. I asked him if he could please loosen it. He ordered me to stand up and turn around. After showing the lieutenant and nurse my arm they both had a shocked expression on their face. Lt. Burch, realizing he had no handcuff keys to loosen the cuff, opened the office door and ordered Sgt. Greer, who was standing out side the door, to readjust my left cuff so that I would regain circulation in my lower arm and ease the pressure off the cut (inflicted by C/O Dietrich) that was causing excruciating pain.

CONCLUSION

After this traumatic list of deliberate, gross, derelictions of duty that I experienced, psychologically and physically by the C/O's and supervisors mentioned in this statement, I was subjected to more torment and mental anguish directly inflicted by C/O Dietrich for a period of up to 14 days. Then I was re-housed away from C/O Dietrich and supervisors mentioned in this statement of facts. Further, I have experienced indirect taunting and reprisals by C/O's within the California Department of Corrections and Rehabilitation for seeking justice. I am suffering physical and psychological trauma on a daily basis as a direct result of the crimes committed against me on January 16, 2007. I am under psychiatric care and take medication to help me deal with the intense suffering I endured on January 16, 2007 and days following.

CSAT 5/21
BRIAN O'DONNELL
T 27719 F 3707L
P.O. BOX 5242
CONCORAN CA.

93212-5242

Office of the Clerk, U.S.
Northern District of Calif
450 Golden Gate Ave
San Francisco, California

